

D-3

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 11, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 06HD-183

Hawaii

Sale of Land License at Public Auction for Removal of Rock Aggregate Purposes,
Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-1-13: Portion of 02.

REQUEST:

Sale of land license at public auction for removal of rock aggregate purposes.

LEGAL REFERENCE:

Section 171-54, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii identified by Tax
Map Key: 3rd/2-1-13: portion of 02, as shown on the attached map labeled Exhibit A.

AREA:

15 acres, more or less.

ZONING:

State Land Use District:	Urban
County of Hawaii CZO:	Agriculture (AG-20)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

To enter and quarry, crush, stockpile, and remove rock and waste deposits for commercial use provided the operation of a rock crusher(s) on and within the license area shall be a permitted use.

LIMITS ON REMOVAL

Minimum of 60,000 cubic yards per year.

LICENSE TERM:

20 years

COMMENCEMENT DATE:

Sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

MINIMUM UPSET ANNUAL LICENSE FEE:

To be determined by staff or independent appraisal, subject to review and approval by the Chairperson.

ROYALTY RATE:

To be determined by staff or independent appraisal, subject to approval by the Chairperson.

EFFECTIVE ROYALTY:

The successful bid at public auction on the annual license fee or the royalty rate applied to the amount removed, whichever is higher.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

The annual license fee and royalty rate shall be reopened after ten (10) years.

PERFORMANCE BOND:

Twice the annual license fee.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on February 8, 2007 with a finding of no significant impact (FONSI).

REMARKS:

At its meeting on January 27, 2006, under agenda item D-2, the Board of Land and Natural Resources approved in principle, the sale of a land license at public auction covering the subject area for the purposes specified and under the terms and conditions cited above (Exhibit B). This Board action came as a result of an inquiry from Yamada & Sons, Inc. to quarry State lands. The purpose of the approval in-principle was to allow the applicant to fund the cost of an Environmental Assessment in compliance with Chapter 343, HRS.

The approval in principle also provided that should the applicant, Yamada and Sons, Inc., not be the winning bidder at the public auction, the successful bidder shall be required to reimburse Yamada & Sons, Inc. the cost of the Chapter 343, HRS compliance.

Several government agencies including the Office of Hawaiian Affairs (OHA) were consulted in the draft EA with no negative comments. The Final Environmental Assessment resulted in a finding of no significant impact (FONSI).

The need for rock aggregate is a basic resource required for roads, buildings, etc. and is vital to the island economy. The new quarry site will provide a source of raw material for the manufacture of products essential for the construction of a wide variety and large number of projects in the Hawaii County, both public and private. These products include engineered construction material such as base course, and components of asphalt and concrete.

It was determined in the Final Environmental Assessment that an anticipated 35,000 tons of material could be extracted from this site on a monthly basis. The 60,000 cubic yards annual minimum is consistent with the adjacent quarries.

As discussed in the approval in principle submittal, there is a need to modify the

conditions by which these quarries are closed. Although prior land licenses have been subject to a requirement for a closure plan, once a quarry is complete, it becomes a large hole in the ground surrounded by 30 to 50 foot cliff faces that perpetually pose a liability to the State. Prior closure plans have included earth berms and fencing that do not really mitigate the long term liability for the State. Once fencing deteriorates, there is really nothing mitigating the sheer cliffs except the earthen berms.

Staff is recommending the following requirements be included in this and all future quarry sites issued on State lands.

Closure plans for quarry sites on State lands:

The remaining quarry face will be stepped back, with a maximum 20-foot rise at ¼ : 1 slope and minimum 10-foot wide benches between each rise. This bench is provided to break up the vertical drop of the pit wall, provide safe access for quarry activities, and to control rock fall. All sides of the quarry shall be required to be left as a clean stabilized slope face without any protruding or perched rocks that may contribute to a rock fall problem.

The subject area is a portion of a large State owned parcel consisting of 2,500+ acres that is adjacent to the County landfill, the County drag strip, the primary County wastewater plant, the Hilo Airport and the National Guard facilities that include a rifle and pistol firing range. As such, it would be reasonable to expect that any future use of this area would be for industrial or other public uses that would be compatible with airport noise and solid waste operations. The exception to this would be that this area also borders existing and potential future DHHL residential development. DHHL has put a large scale residential development of over 1,000 homes on hold due to noise levels produced by the County's drag strip facilities.

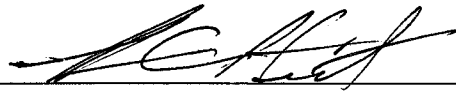
As stated earlier, there is a heavy demand for quarry material and as such, staff feels that this parcel will be successfully sold at auction. Staff is therefore recommending that the Board authorize the sale of a land license at public auction.

RECOMMENDATION: That the Board:

1. Authorize the sale of a land license at public auction covering the subject area for removal of rock aggregate purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current land license document form, as may be amended from time to time;
 - B. The closure of this quarry shall follow the guidelines as described in the remarks section of this submittal;

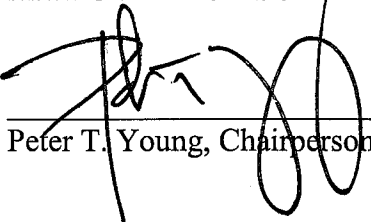
- C. Should Yamada and Sons, Inc., not be the winning bidder at the public auction, the successful bidder shall be required to reimburse Yamada & Sons, Inc. the cost of the Chapter 343, HRS compliance
- D. Review and approval by the Department of the Attorney General; and
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



WCH Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

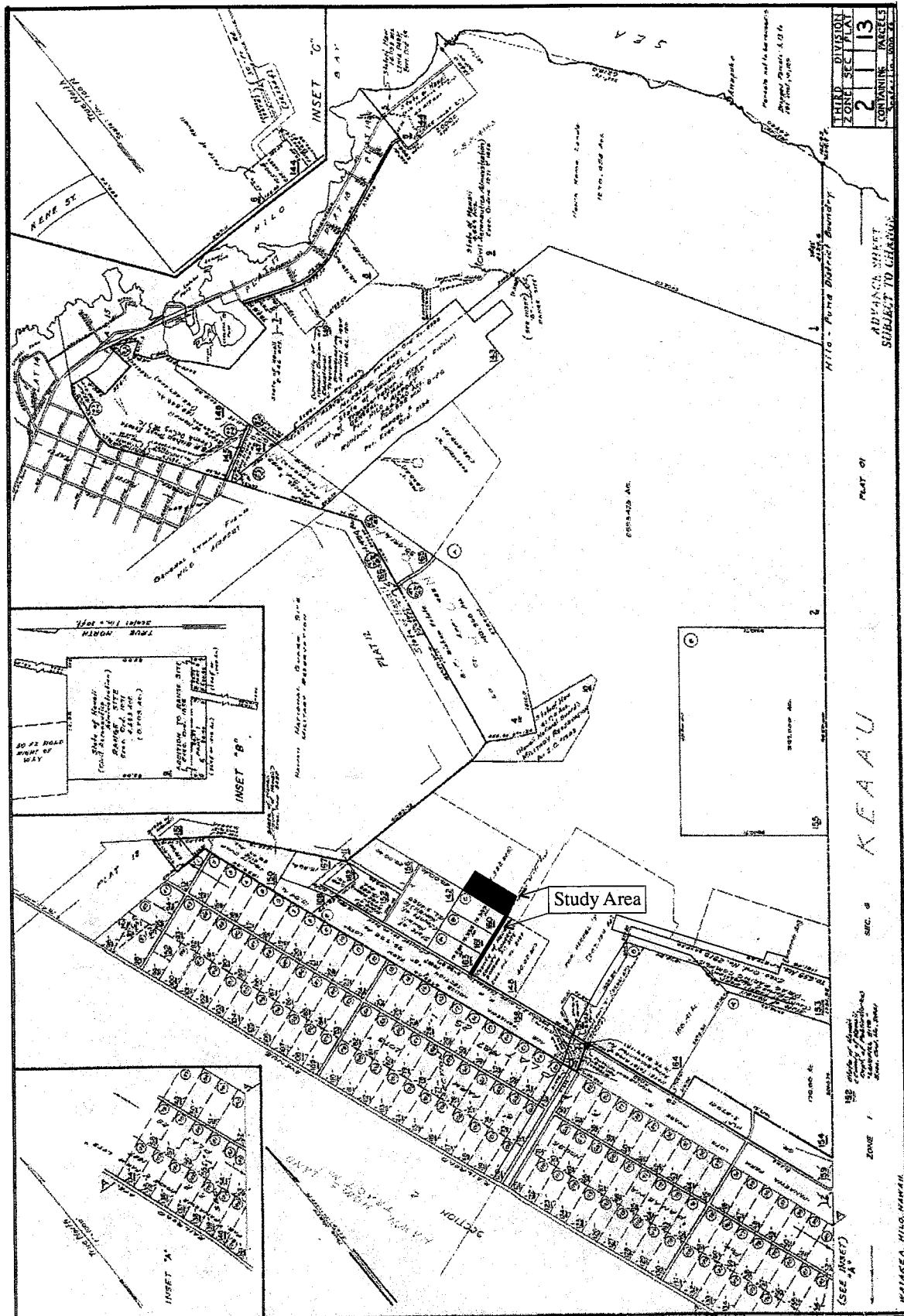


Figure 2. Tax Map Key 3-2-1-13 showing current study area (portions of Parcels 002 and 148).

5



EXHIBIT B

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 27, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:

Island of Hawaii

Approval in Principle - Sale of Land License at Public Auction for Removal of Rock
Aggregate Purposes, Waiakea, South Hilo, Hawaii
Tax Map Key: 3rd/ 2-1-13: Portion of 02

APPLICANT:

Yamada and Sons, Inc., a Hawaii corporation, whose business and mailing address is 733
Kanoelehua Avenue, Hilo, Hawaii 96720.

REQUEST:

Approval in Principle - Sale of land license at public auction for removal of rock aggregate
purposes.

LEGAL REFERENCE:

Section 171-54, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax
Map Key: 3rd/ 2-1-13: Portion of 02, as shown on the attached map labeled Exhibit A.

AREA:

15 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Agriculture (AG-20)

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

January 27, 2006

D-2

BLNR – Approval In-Principle
For Sale of Land License
by Public Auction

Page 2

January 27, 2006

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

To enter and quarry, crush, stockpile, and remove rock and waste deposits for commercial use provided the operation of a rock crusher(s) on and within the license area shall be a permitted use.

LIMITS ON REMOVAL

To be determined at the time of final submittal to the Board.

LICENSE TERM:

20 years

COMMENCEMENT DATE:

Sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

MINIMUM UPSET ANNUAL LICENSE FEE:

To be determined by staff or independent appraisal, subject to review and approval by the Chairperson.

ROYALTY RATE:

To be determined by staff or independent appraisal, subject to approval by the Chairperson.

BLNR – Approval In-Principle
For Sale of Land License
by Public Auction

Page 3

January 27, 2006

EFFECTIVE ROYALTY:

The successful bid at public auction on the annual license fee or the royalty rate applied to the amount removed, whichever is higher.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

The annual license fee and royalty rate shall be reopened after ten (10) years.

PERFORMANCE BOND:

Twice the annual license fee.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The purpose of this submittal is an approval in-principle of a land license so as to allow the Applicant to fund the cost of an Environmental Assessment in compliance with Chapter 343, HRS. The purpose of the approval in-principle is for the Board to also approve the imposition of a condition in the final submittal for auction, that should the Applicant, Yamada & Sonc, Inc., not be the winning bidder at the public auction, the successful bidder shall be required to reimburse Yamada & Sons, Inc., the cost of Chapter 343, HRS compliance.

NOTE: The anticipated cost of the preparation of an Environmental Assessment is estimated to be \$17,000. A proposal from Geometrictrician Associates, LLC is attached (Exhibit B) as support for the estimated cost of Chapter 343, HRS compliance.

REMARKS:

At its meeting of October 14, 2005, the Board approved a new five year land license to the Applicant on an adjacent area within which the Applicant had been quarrying for the last 20 years under a license that expired in November 2005. The Board's action was limited to 5 years and issued as a direct license due to the limited material remaining to be quarried estimated to take another 3 to 5 years and the County of Hawaii's interest in obtaining the area for designation as a site for disaster debris to satisfy FEMA requirements.

BLNR – Approval In-Principle
For Sale of Land License
by Public Auction

Page 4

January 27, 2006

The need for rock aggregate is a basic resource required for roads, buildings, etc. and is vital to the island economy. Although, the Applicant has the existing quarry license together with a license on Kamehameha School land, they need to anticipate future needs since the need for Chapter 343 compliance and special permitting from the County of Hawaii, require long lead times for the establishment of new quarry areas. The Applicant understands the need for the license to be issued by public auction and is willing to front the cost of Chapter 343 compliance. However, the Applicant is requesting that should he not be the winning bidder, that such winning bidder be required to reimburse him for the cost of compliance.

Towards that end, staff has attached a copy of a fee proposal the Applicant received from a consultant for the preparation of an Environmental Assessment. The fee proposal is for \$17,000, however, may be subject to additional fees depending upon advertising costs, a requirement for additional public meetings, request for contested case, etc. The Applicant is requesting that the actual cost of Chapter 343, HRS, compliance be subject to reimbursement should he not be the winning bidder and that such reimbursement shall be based on actual cost subject to review and approval by DLNR. The reimbursement shall not include reimbursement of the Applicant's own internal staff time and costs.

As part of future land licenses, staff would like to impose modified conditions on the required closure plans. Although prior land licenses have been subject to a requirement for a closure plan, once a quarry is complete, it becomes a large hole in the ground surrounded by 30 to 50 foot cliff faces that perpetually pose a liability to the State. Prior closure plans have included earth berms and fencing that do not really mitigate the long term liability for the State. Once fencing deteriorates, there is really nothing mitigating the sheer cliffs except for earthen berms.

Staff researched quarry closure plans on the internet and found a reasonable concept that is used in Alaska. The following is a sample of the requirement:

The remaining quarry face will be stepped back, with a maximum 20-foot rise at 1/4 : 1 slope and minimum 10-foot wide benches between each rise. This benching is provided to break up the vertical drop of the pit wall, provide safe access for quarry activities, and to control rock fall. All sides of the quarry shall be required to be left as a clean stabilized slope face without any protruding or perched rocks that may contribute to a rock fall problem.

Unfortunately, it is impractical to impose this condition upon the existing and prior quarry licenses since they have already been quarried to the boundary. However, staff is recommending that this condition be imposed on future quarry land licenses and will include it as a condition of the new proposed quarry. Staff will also require that the condition be included in the drafting of the Environmental Assessment for the new proposed quarry.

Staff is also recommending that the Environmental Assessment to be prepared by the Applicant include a proposed new separate land license for an expansion of the existing and former quarries to create the desired benching effect to mitigate the existing sheer cliffs. Although the practicality may be hindered by the location of existing roads and boundaries, staff would like to proceed with this mitigating effort wherever possible.

The subject area is a portion of a large State owned parcel consisting of 2500+ acres that is adjacent to the County landfill, the County dragstrip, the primary County wastewater plant, the Hilo Airport and the National Guard facilities that include a rifle and pistol firing range. As such, it would be reasonable to expect that any future use of this area would be for industrial or other public uses that would be compatible with airport noise and solid waste operations. The exception to this would be that this area also borders existing and potential future DHHL residential development. DHHL has put a large scale residential development of over a 1,000 homes on hold due to the noise levels produced by the County's drag strip facilities.

Given the foregoing, staff would consider the proposal reasonable as a land use and recommends that the Board approve in-principle the issuance of a land license subject to the Applicant fronting the cost of Chapter 343 compliance and an acceptable FONSI.

No agency or community comments were solicited as this is an approval in principle and the intent is for the Applicant to prepare an Environmental Assessment that would include a pre-consultation process involving the standard agencies normally included in our circulation for comment.

RECOMMENDATION: That the Board:

1. Approve in principle, the sale of a land license at public auction covering the subject area for the purposes specified in the foregoing under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The Applicant is authorized to proceed with the necessary studies and surveys necessary for compliance with Chapter 343, HRS;

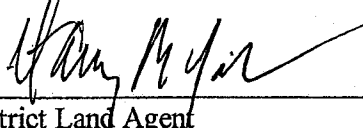
BLNR -- Approval In-Principle
For Sale of Land License
by Public Auction

Page 6

January 27, 2006

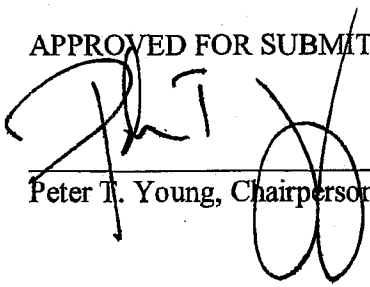
- B. The direct costs associated with the Chapter 343, HRS, compliance exclusive of Applicant's staff and time costs shall be a reimbursable cost should the Applicant not be the winning bidder at the public auction of a land license on the subject area;
- C. Applicant acknowledges that there is no assurance of a Findings of No Significant Impact on the proposed license and no assurance that the Board will approve the sale of a land license after the completion of the Final Environmental Assessment;
- D. In event there is no FONSI and the Board deems not to authorize a sale of a land license, there shall be no obligation for reimbursement for the Applicant's cost; and
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

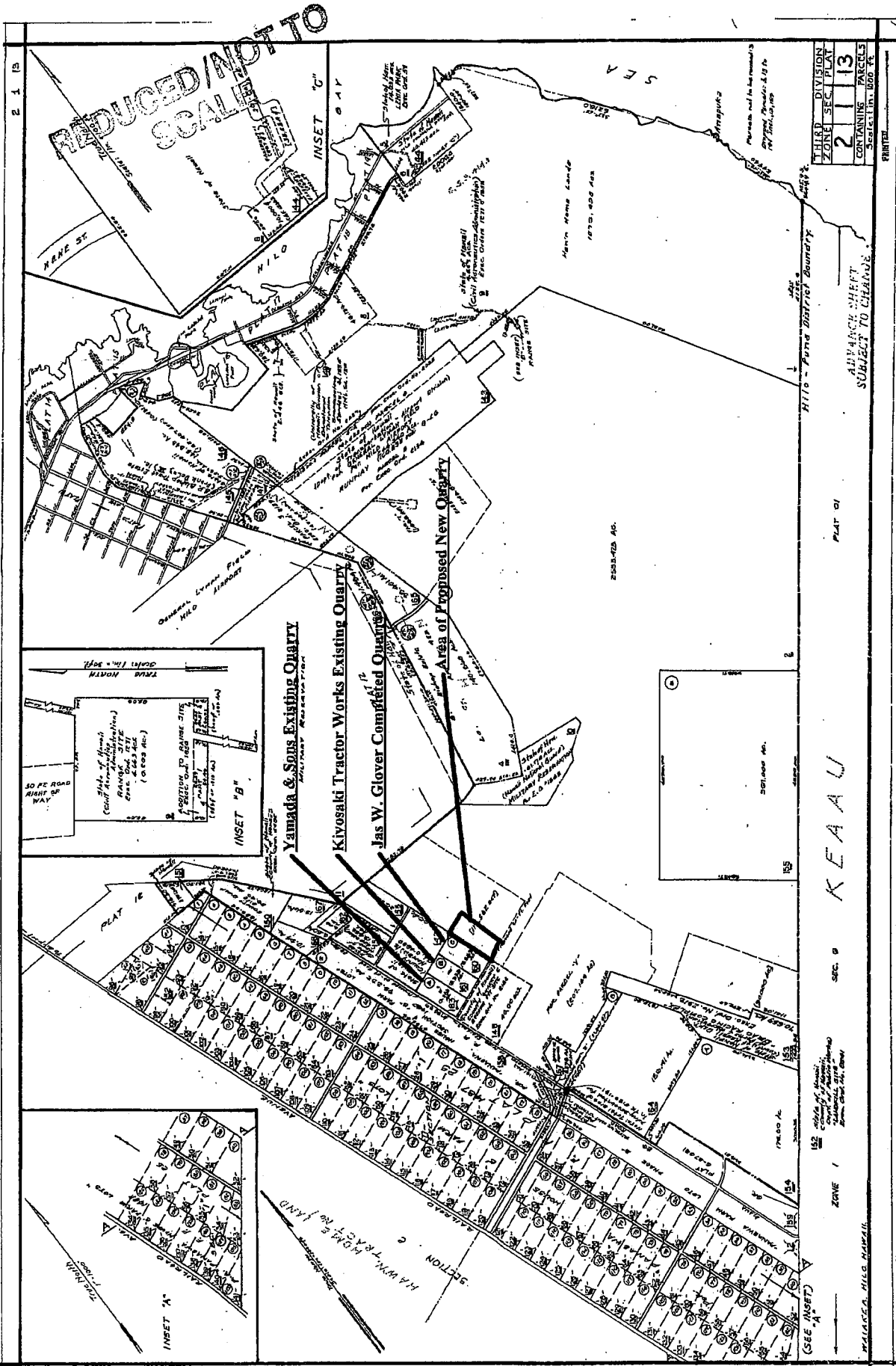


District Land Agent
Harry M. Yada

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson



DATE: JAN 24 1994
FILE: 5870450
BY: [illegible]
SHEET: 2 of 10
[illegible text]